



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Relationship Duration	Percentage of Respondents
10 years or more	45%
5 to 9 years	35%
1 to 4 years	15%
Less than 1 year	5%

DECISION

Case #: MKB - 175121

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2016, under Wis. Stat., §49.45(5), to review a decision by the Bureau of Children's Services to discontinue Medical Assistance (MA) under the Katie Beckett program, a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether petitioner continues to meet the Katie Beckett level of care requirement.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Written submission of [REDACTED], RN

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. Petitioner is 17-years old and has been eligible for Katie Beckett MA since 2012. His level of care has been Severe Emotional Disturbance (SED). He does not have physical impairments and does not have an impairment akin to mental retardation.

3. An annual eligibility review was done in the spring, 2016. Following the review petitioner's parents were notified by a letter dated May 24, 2016 that Katie Beckett MA would end June 24 because he no longer met the SED level of care.
4. Petitioner is diagnosed with bipolar disorder, post-traumatic stress syndrome (PTSD) and attention deficit hyperactivity disorder (ADHD). He has an individualized education program (IEP) for emotional behavior, and he sees a private counselor bi-weekly.
5. Records show that petitioner continues to have a quick temper and is argumentative, but that physical altercations no longer occur. He has a tendency to withdraw and fail to respond to school staff, and he can become argumentative. He has poor organizational skills. He continues to have trouble with handling frustration and acting appropriately, but only on a monthly basis. He does not have substance abuse issues. Much of his progress is related to his medication regime and counseling sessions, which would be jeopardized without MA.

DISCUSSION

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. Sec. 49.47(4)(c)1m, Wis. Stats. The agency is required to review Katie Beckett waiver applications in a five-step process. The first step is to determine whether the child is age 18 or younger and disabled. Petitioner continues to meet this first standard. The second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. The agency determined that petitioner does not require this level of care. (The remaining three steps are assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.)

The Department developed a policy manual, issued in January, 1993, which defines and describes childhood care levels. The level of care criteria were amended most recently in 2007. The ICF-DD criteria were updated as of October, 2009. A policy document for levels of care for all children's long term support programs was issued in February, 2011. It can be found on the internet at www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf. There currently are four levels of care: hospital, psychiatric hospital for severe emotional disorders (SED), nursing home, and care facility for the developmentally disabled (ICF-DD). I will not address the nursing home or ICF-DD levels because petitioner clearly does not meet them.

To meet the psychiatric hospital (SED) level of care, the child must have an emotional disturbance that has persisted at least six months and is expected to persist for at least one year; it must be diagnosed by a certified psychiatrist or psychologist using the DSM-IV classifications; there must be severe psychiatric symptoms or dangerous behaviors as described in one of four standards; and the child must be receiving services from at least two service systems including the juvenile system, child protective services, special education relating to emotional needs, substance abuse services, or the mental health system (or from one of the systems but for at least three hours per week). *Id.*, p. 8. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions.

The issue is whether petitioner has severe symptomology or dangerous behaviors. Under the current criteria the severe symptom criterion includes several standards in descending order. The first standard is that the child will be found to have severe symptoms if he has one of four symptoms either currently, within the past three months, or twice within the past year: psychosis, suicidality, violence, or anorexia/bulimia. Violence is defined as acts that endanger another person's life, and that cause the victim to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats. The child must

have committed violence at least once in the past three months or at least twice in the past year, and because of the commission of violence, the child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital. Id., p. 13. Petitioner does not have any of those symptoms.

The next standard under the severe symptom criterion is that the child have frequent and intense problems in two of the following four behaviors: (1) High-risk behaviors such as running away, substance abuse, dangerous sexual contact, use of inhalants, (2) self-injurious behaviors such as head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, inserting harmful objects into body orifices, (3) aggressive/offensive behavior toward others such as verbal abuse, hitting/biting/kicking, masturbating in public, urinating on another or smearing feces, serious threats of violence, sexually inappropriate behavior, animal abuse, (4) lack of behavioral controls such as destruction of property, stealing/burglary, obsessions interfering with daily life.

Such behaviors must occur at least four times per week and require professional intervention whenever they occur. I do not believe that petitioner meets any of those behaviors at the required intensity.

The third standard is that the child has one of the four behaviors in the second standard, plus a significant deficit in social skills or school/work issues. Deficits in social skills include not making eye contact, absence/dramatic reduction of social interactions, inability to interpret others' non-verbal cues, not having similar aged friends (i.e. friends are either much older or much younger), excessive familiarity with strangers. School/work issues include failing grades, repeated truancy, and/or inability to conform to the school or work schedule, or the need for in-school supports for emotional/behavioral problems at least one-third of the time. Again, petitioner does not meet the requirement of one dangerous behavior and it is not evident that he meets the standards for social skills or school issues.

The final standard requires the child to meet one dangerous behavior or one deficit in social or school/work skills, plus have a "rare and extreme circumstance" such as daily extreme disruptive behaviors, severe nightmares or night terrors four times per week, or being unable to complete routine events daily due to an obsession. Again, petitioner's current mental/emotional problems are not at those levels.

In the past it appears that petitioner likely met the third dangerous behavior (aggressive behavior toward others) coupled with deficits in social skills and school issues. At this point petitioner does not appear to meet the aggressive behavior standard. He clearly continues to have problems, as pointed out by his parents' letter to the agency, but his acting out appears to be more defiant than dangerous and occurs much less frequently than in the past. I have to conclude that the agency made the correct determination.

If petitioner backslides further, his parents can always ask the program to look at his case again. I cannot order benefits to continue, however, on the possibility that he might backslide.

CONCLUSIONS OF LAW

The Agency correctly determined that petitioner no longer meets the SED level of care for Katie Beckett eligibility.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of August, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 2, 2016.

Bureau of Long-Term Support
Division of Health Care Access and Accountability